

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 17, 2014

Elisabeth A. Shumaker
Clerk of Court

In re:

AARON EUGENE COPELAND,

Movant.

No. 14-5035
(D.C. Nos. 4:08-CR-00137-CVE-1,
4:12-CV-00101-CVE-TLW,
4:13-CV-00479-CVE-FHM)
(N.D. Okla.)

ORDER

Before **KELLY, HARTZ**, and **O'BRIEN**, Circuit Judges.

Aaron Eugene Copeland, a federal prisoner proceeding pro se, seeks authorization to file a second or successive motion under 28 U.S.C. § 2255. Because Mr. Copeland cannot meet the requisite conditions for authorization, we deny the motion and dismiss this proceeding.

In 2008, Mr. Copeland pleaded guilty to being a felon in possession of a firearm. Because of his prior convictions, he was sentenced pursuant to the Armed Career Criminal Act (ACCA) to the mandatory minimum sentence of 180 months' imprisonment. He did not file a direct appeal.

In February 2012, he filed a § 2255 motion to vacate, set aside or correct his sentence. The district court dismissed the motion because it was filed outside of the one-year statute of limitations, and we denied his request for a COA. *See United*

States v. Copeland, 509 F. App'x 760, 761-62 (10th Cir.), *cert. denied*, 134 S. Ct. 244 (2013).

In July 2013, Mr. Copeland filed a second § 2255 motion. The district court concluded that this motion was an unauthorized second or successive § 2255 motion and dismissed it for lack of jurisdiction. We denied Mr. Copeland's request for a COA. *See United States v. Copeland*, 539 F. App'x 918, 919 (10th Cir. 2013).

In December 2013, Mr. Copeland filed a third § 2255 motion. He argued that his "substantive" motion should not be subject to the limitations of a second or successive § 2255 motion. *See United States v. Copeland*, No. 08-CR-0137-CVE, 2014 WL 63933, at *1 (N.D. Okla. Jan. 8, 2014). The district court disagreed and dismissed the motion for lack of jurisdiction as an unauthorized second or successive § 2255 motion.

Mr. Copeland now seeks authorization to file his second or successive § 2255 motion, relying on the Supreme Court's recent ruling in *Descamps v. United States*, 133 S. Ct. 2276 (2013). Authorization may be granted if a successive § 2255 motion relies on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," 28 U.S.C. § 2255(h)(2). But *Descamps* did not announce a new rule of constitutional law; rather, it concerned a matter of statutory interpretation as to whether a certain crime

qualifies as a violent felony under the ACCA.¹ *See In re Shines*, 696 F.3d 1330, 1332 (10th Cir. 2012) (explaining that Supreme Court case concerning statutory interpretation did not announce a new rule of constitutional law and could not satisfy the standard for authorization in § 2255(h)(2)); *see also Abernathy v. Wanders*, 713 F.3d 538, 547 (10th Cir.) (noting that “AEDPA . . . did not provide a remedy for second or successive § 2255 motions based on intervening judicial interpretations of statutes”), *petition for cert. filed* (U.S. Dec. 5, 2013) (No. 13-7723).

Accordingly, we deny authorization and dismiss this matter. This denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court



ELISABETH A. SHUMAKER, Clerk

¹ *Descamps* held that the California statute for burglary in the first degree was nondivisible and the district court erred by applying the modified categorical approach when sentencing the defendant under the ACCA. 133 S. Ct. at 2285-86. Under the categorical approach, the Supreme Court found that the California burglary statute did not require breaking and entering as an element of the offense, and a conviction under the statute did not constitute a generic burglary offense under the ACCA. *Id.* at 2292-93.